Judge Boyd, delivering the opinion, refers to *Reid* v. *Bank*, 29 Gratt. 719, holding that the homestead privilege given by the constitution is a privilege personal to the debtor, to be exercised by him or not, as he may choose; that the homestead law, unlike the poor debtor law, does not execute itself, and that the exemption thereunder, again unlike that under the poor debtor law, can be waived. Citing *Linkenhoker* v. *Deitrick*, 81 Va. 54; *In re Solomon*, 2 Hughes, 164. Authorities are also cited to show that the policy of the homestead act is not the protection of the debtor, but of his family. *Sears* v. *Hanks*, 14 Ohio, 498; *Leavitt* v. *Metcalf*, 2 Vt. 342, 19 Am. Dec. 718; *Griffin* v. *Sutherland*, 14 Barb. (N. Y.), 456. The opinion continues:

"The bankrupt in this case, upon the facts set forth in his petition, seeks exemption for no such purpose, but avows the object of his petition to be to remove so much of his property as he can from the hands of the trustee in bankruptcy, in order that it may go to the benefit of certain creditors holding what are called waiver notes.

"'While the exemption laws are to be construed liberally so as to carry with them the benevolent policy of the legislature, debtors claiming their benefit must bring themselves at least within the spirit of their provisions.' Am. & Eng. Enc. Law, 2d ed., Vol. 12, page 77.

"'As a general rule, if a person who holds a homestead and is under no disability to assert it, fails to do so at the time and in the manner provided by law, in any action or proceeding involving the right, he will be deemed to have waived his exemption.' Am. & Eng. Enc. Law, Vol. 15, page 638. Cases cited in note 7.

"We think this doctrine is in entire harmony with the exemption laws of Virginia as construed by the highest court of the State. The claim to exemptions under the Constitution and statute law of the State is a privilege which the debtor may exercise or not as he chooses, and it being left to his option, he may claim as exempt property to the full amount of two thousand dollars, or for a less amount, if he may see proper. In this case the bankrupt has exercised his privilege, has selected the property which he claimed as exempt, and, with the exception of the property so claimed, the title to the estate has vested in the trustee. We think the bankrupt is concluded, and should not be allowed to amend his schedules as prayed for."

BANKRUPTCY.—Among other recent important rulings in bankruptcy are the following:

Omission from Schedule.—Property must have been knowingly and fraudulently omitted from the schedule of bankrupt's assets to defeat his right to a discharge under section 29b, clause 2, Act 1898, and the objecting creditor must establish these essential ingredients of the offense. *In re Eaton*, 110 Fed. 731.

Husband and Wife.—Contracts between husband and wife for the loan of money are held invalid by the State courts of Massachusetts as being contrary to public policy. And the Federal courts hold accordingly that a claim of a wife against the estate of her bankrupt husband for money lent is not provable. *In re Talbot*, 110 Fed. 924.

Rents of Mortgaged Property.—When mortgaged property comes into possession of a trustee in bankruptcy, and before action taken by mortgagee to secure possession of the property, the rents thereon accruing after adjudication, belong to the trustee. *In re Dole*, 110 Fed. 927.

Comity Between State and Federal Courts.—The jurisdiction of a State court, which has appointed a receiver in insolvency proceedings, is ousted by bankruptcy proceedings properly instituted in a Federal court. The receiver of the bankrupt

court is entitled to the possession of the property, but comity requires that application be made by him to the State court for the proper order. *In re Lengert Wagon Co.*, 110 Fed. 927.

But the possession by the receiver of a State court of the assets of a bankrupt partnership is no defence to a petition in bankruptcy against the partnership. *In re Kersten*, 110 Fed. 929.

In the latter case the court said: "If the adjudication of bankruptcy so operates, as remarked in the recent decision of the Supreme Court in *Bryan* v. *Bernheimer*, 5 Am. Bankr. R. 623, 629, 21 Sup. Ct. 557, 559, that the property of the bankrupts is 'thereby brought within the jurisdiction of the court of bankruptcy,' it nevertheless rests with the State court, in the first instance, at least, to determine its course when such contingency is duly presented. Moreover, the judicial custody can be changed only through action by the State court for its release, or through plenary procedure, in conformity with the law which governs both jurisdictions, and in accord with comity."

Domicile.—The burden of proof of residence in required district is upon petitioner in voluntary proceedings. *In re Scott*, 111 Fed. 144.

Fines.—A fine imposed for a violation of a State statute is not a provable debt. *In re Moore*, 111 Fed. 145 (Ky.).

Contra: In re Alderson, 98 Fed. 588 (W. Va.).

Mercantile Agencies.—An incorporated mercantile agency is within the provisions of section 4b of the Bankrupt Act of 1898, and is subject to involuntary proceedings. *In re Mut. Merc. Agency*, 111 Fed. 152.

Chattel Mortgages.—A chattel mortgage to secure a past loan *held* void, when executed by insolvent within four months of bankruptcy, although an agreement to execute it was made when loan was effected. *In re Ronk*, 111 Fed. 154.

Mortgaged Property.—The right to redeem mortgaged property where, under State laws, the legal title remains in mortgagor, passes with such title to trustee in bankruptcy. *In re Novak*, 111 Fed. 161.